

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)
)
Plaintiff,)
)
v.) C.A. No. 21-1015 (GBW)
)
SAREPTA THERAPEUTICS, INC.,)
)
Defendant.)
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SAREPTA THERAPEUTICS, INC. and THE)
UNIVERSITY OF WESTERN AUSTRALIA,)
)
Defendant/Counter-Plaintiffs,)
)
v.)
)
NIPPON SHINYAKU CO., LTD.)
and NS PHARMA, INC.)
)
Plaintiff/Counter-Defendants.)

**SAREPTA THERAPEUTICS, INC. AND THE UNIVERSITY OF WESTERN
AUSTRALIA'S MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF
DRS. CHRISTINE C. ESAU, MICHELLE L. HASTINGS,
AND MATTHEW J.A. WOOD**

Pursuant to Federal Rule of Evidence 702, Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia (“UWA”) respectfully move for the Court to exclude opinions of Nippon Shinyaku Co., Ltd. and NS Pharma, Inc.’s experts regarding state of mind of others. Specifically, Sarepta and UWA request exclusion of:

- the opinions and testimony of Dr. Christine C. Esau relating to willful infringement, including Sections XI.D and XII.D of her Opening Expert Report and Paragraphs 16-18 in her Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively;

- the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement, including Section VIII of her Reply Expert Report, served on October 27, 2023; and
- the opinions and testimony of Dr. Matthew J.A. Wood relating to conception, including Section V of his Opening Expert Report and Section II of his Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively.

The grounds for this Motion are set forth in the Opening Brief in support thereof, filed concurrently.

OF COUNSEL:

Charles E. Lipsey
J. Derek McCorquindale
Ryan P. O'Quinn
L. Scott Burwell
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
1875 Explorer Street, Suite 800
Reston, VA 20190-6023
(571) 203-2700

William B. Raich
Michael J. Flibbert
John M. Williamson
Yoonhee Kim
Yoonjin Lee
Kaitlyn S. Pehrson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
(202) 408-4000

Alissa K. Lipton
Eric J. Lee, Ph.D.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Seaport Lane
Boston, MA 02210-2001
(617) 646-1600

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Megan E. Dellinger

Jack B. Blumenfeld (#1014)
Megan E. Dellinger (#5739)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
mdellinger@morrisnichols.com

Attorneys for Defendant/Counter-Plaintiffs
Sarepta Therapeutics, Inc. and The University of
Western Australia

Amanda P. Reeves
Anna M. Rathbun
Graham B. Haviland
Jesse Aaron Vella
Michael A. Morin
David P. Frazier
Rebecca L. Rabenstein
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
(202) 637-2200

Ernest Yakob
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

December 11, 2023

RULE 7.1.1 CERTIFICATION

Pursuant to D. Del. LR 7.1.1, the subject of this motion was raised with counsel for Nippon Shinyaku Co., Ltd. and NS Pharma, Inc. during a telephonic meet and confer that included Delaware counsel for all parties, and the parties were not able to reach agreement.

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)

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and NS PHARMA, INC.)
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Plaintiff/Counter-Defendants.)

**[PROPOSED] ORDER GRANTING SAREPTA THERAPEUTICS, INC. AND THE
UNIVERSITY OF WESTERN AUSTRALIA'S MOTION TO EXCLUDE CERTAIN
OPINIONS AND TESTIMONY OF DRS. CHRISTINE C. ESAU, MICHELLE L.
HASTINGS, AND MATTHEW J.A. WOOD**

Having considered Sarepta Therapeutics, Inc. ("Sarepta") and the University of Western Australia's ("UWA's") motion to exclude the opinions and testimony of Dr. Christine C. Esau relating to willful infringement; the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement; and the opinions and testimony of Dr. Matthew J.A. Wood relating to conception, and all related papers filed in connection therewith,

IT IS HEREBY ORDERED that Sarepta and UWA's Motion is **GRANTED**: the testimony and opinions of Nippon Shinyaku Co. Ltd.'s and NS Pharma, Inc.'s experts regarding state of mind of others are excluded as follows:

- the opinions and testimony of Dr. Christine C. Esau relating to willful infringement, including Sections XI.D and XII.D of her Opening Expert Report and Paragraphs 16-18 in her Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively;
- the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement, including Section VIII of her Reply Expert Report, served on October 27, 2023; and
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IT IS SO ORDERED, this ____ day of _____, 2024.

The Honorable Gregory B. Williams
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on December 11, 2023, upon the following in the manner indicated:

Amy M. Dudash, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1201 North Market Street, Suite 2201
Wilmington, DE 19801
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Amanda S. Williamson, Esquire
Christopher J. Betti, Esquire
Krista Vink Venegas, Esquire
Maria E. Doukas, Esquire
Michael T. Sikora, Esquire
Zachary Miller, Esquire
Guylaine Haché, Ph.D.
Wan-Shon Lo, Esquire
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Alison P. Patitucci, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Jitsuro Morishita, Esquire
MORGAN, LEWIS & BOCKIUS LLP
16F, Marunouchi Building,
2-4-1 Marunouchi, Chiyoda-ku
Tokyo, 100-6316 Japan
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)